



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Bureau of Competition
Health Care Division

May 17, 2021

The Honorable Denise Cote
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1910
New York, NY 10007

Re: *FTC, et al. v. Vyera Pharmaceuticals, LLC, et al.*, 1:20-cv-00706 (DLC)

Dear Judge Cote:

The Federal Trade Commission respectfully requests permission to file under seal Plaintiffs' letter motion seeking spoliation sanctions against the Corporate Defendants and the following supporting exhibits:

- Ex. A (excerpts from Akeel Mithani investigational hearing transcript);
- Ex. B (excerpts from Akeel Mithani deposition transcript);
- Ex. C (Dec. 15, 2017 Phoenixus AG board of directors meeting minutes);
- Ex. D (July 25-Aug. 25, 2017 email chain regarding "QuintilesIMS | Turing Support Discussion");
- Ex. E (Aug. 25, 2017 email regarding "Daraprim Data on IMS & Symphony");
- Ex. F (excerpts from Aug. 8, 2019 phone conversation between Defendant Shkreli and Mithani);
- Ex. G (excerpts from Anne Kirby investigational hearing transcript);
- Ex. H (Apr. 4, 2018 email chain regarding "ASD Order");
- Ex. I (Oct. 31, 2017 email chain regarding "Daraprim Comparator Request – Aavis Pharmaceuticals");
- Ex. K (Feb. 18, 2021 letter from Black to Kaufman);
- Ex. L (Apr. 30, 2021 letter from Mahoney to Black); and
- Ex. M (excerpts from the Corporate Defendants' interrogatory responses).

The FTC requests that the Court seal all phone numbers and email addresses from Exhibits D, E, H, I, K, L, and M, as they are sensitive personally identifiable information.

Pursuant to the Court's orders (ECF 261 & 266), Defendants provided the following proposed findings to justify their requests to seal or partially seal Exhibits A, B, C, D, F, and G:

- Exs. A, B, D, G. The Corporate Defendants request to seal excerpts that contain or reflect "commercially sensitive business information, and thus fall within the definition of 'Confidential Material' under the Stipulated Protective Order."

*the requests to redact/seal
the exhibits is granted. the
request to redact portions of
the 5/17/21 letter is denied.*
Denise Cote
5/18/21

- Ex. C. The Corporate Defendants request to seal this document as it “reflects deliberations of the Phoenix AG board of directors regarding numerous issues facing the company and contains extensive commercially sensitive information. The entirety of the document falls within the definition of ‘Confidential Material’ under the Stipulated Protective Order.”
- Ex. F. Shkreli and the Corporate Defendants request to file this document “under seal in its entirety because the purported discussion between Mr. Mithani and Mr. Shkreli relates to sensitive and confidential business communications between a company executive and company shareholder. These pages contain confidential commercial and business information relating to Phoenixus and Vyera that is competitively and commercially sensitive, has not been released into the public domain, and if it were released into the public domain, would likely cause significant competitive or commercial harm to Phoenixus, Vyera and Mr. Shkreli. In addition, this document appears to be a purported transcript of a recorded communication that has not been authenticated or verified, and therefore is entitled to protection from public disclosure because it may wrongfully subject Mr. Shkreli to embarrassment, humiliation or ridicule, thus entitling it to protection under the Protective Order.”

For the same reasons, Plaintiffs also request permission to seal portions of the letter motion describing the contents of these documents.

In accordance with Rule 7.B of Your Honor’s Individual Practices in Civil Cases and with the requirements for electronically filing under seal, Plaintiffs will publicly file our letter and Exhibits A, B, D, E, G, H, I, K, L, and M with the proposed redactions, slip sheets noting that Exhibits C and F are filed under seal, and Exhibits J, N, and O (which have no proposed redactions). On a separate docket entry, Plaintiffs will file under seal the letter and exhibits with the proposed redactions highlighted.

Sincerely,

/s/ Markus H. Meier
Assistant Director